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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,476	06/19/2006	Christophe Martin	1032326-000394	3680

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EXAMINER
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KUDDUS, DANIEL A

ART UNIT	PAPER NUMBER
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2164

NOTIFICATION DATE	DELIVERY MODE
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10/21/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/583,476	<b>Applicant(s)</b> MARTIN ET AL.	
	<b>Examiner</b> DANIEL KUDDUS	<b>Art Unit</b> 2164	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 03 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 11-20.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Charles Rones/  
 Supervisory Patent Examiner, Art Unit 2164

Applicant's arguments presented on October 09, 2009 have been considered, but they are not persuasive. Applicants canceled claims 1-10. Claims 11-20 remain pending in this application.

Applicant's argument directed to claim objection is considered, but it is not persuasive. Claim 11 recite the limitation of "A method", which might include steps that can be implemented within a person's mind which is not an acceptable claim limitation. Therefore, "A computer implemented method" would be more appropriate. As such, objection to claim 11 is hereby sustained.

Applicant's arguments directed to claim 18 (under 35 USC 101) have been fully considered, but they are not persuasive. Claim 18 is directed to "A server for backing up data" and "means for backing up data" and "resumes the backup data". It appears that the claim as a whole can be implemented using software means only, and the units that make up the system do not result in a tangible practical application under 35 U.S.C. § 101. Hence, the system is not tangible embodied in a manner so as to be executable. The body of claim, there are no component that comprise hardware. Therefore, claim 18 is non-statutory. As such, rejection to claim 18 (under 35 USC 101) is hereby maintained.

With respect to applicant's arguments on pages 8-11, Ludwig cannot support a rejection of claim 11 under 35 U.S.C. § 102(e) because the reference does not disclose every claim feature...claim 11 recites...wherein said method includes an asynchronous backup mode in which, once the mobile communication device has prepared a first subset of data from among a batch of data to be backed up and transmitted the first subset of data to a network server for backing up, the backup is delayed by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device, and the backup of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time.. Ludwig lacks disclosing or suggesting at least the above-noted features of claim 11.. applicant's claim 11, the backup of subsequent subsets of data is delayed by a 'predetermined period of time'...The waiting time between backing up subsets of data is predetermined, i.e. fixed length of time... identify (a) the feature of Ludwig that is considered to constitute a predetermined period of time, and (b) where the reference teaches that the backing up of data is suspended for such a period of time, and then resumes at the end of the period". Examiner respectfully disagrees. The limitation of fixed length of time, suspended for such a period of time etc. is not recited in the claim. Ludwig teaches claim recites limitation a method includes an asynchronous backup mode in which, once the mobile communication device has prepared a first subset of data from among a batch of data to be backed up and transmitted the first subset of data to a network server for backing up (see abstract, the method comprising..plurality of 'users' at their communication devices (i.e. mobile communication device), once the mobile communication device has prepared a first subset of data from among a batch of data to be backed up and transmitted the first subset of data to a network server for backing up. Note that, batch is a set of items, records, or documents to be processed as a single unit. Hence, Ludwig teaches (see [0058], 'audio/video/data networking can also be implemented' using 'a single pair of lines' for both audio/video and 'data communications', [0107], transmit outgoing video and audio signals into ports and respectively, [0084], resulting single analog mosaic obtained from video mosaicing circuitry is then transmitted to the individual CMWs for display on the screens thereof, [0156], caller's image also appears on his/her own screen in a video mosaic, which will also include images of 'subsequently' added participants, [0249]).

Ludwig also teaches the backup is delayed by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device, and the backup of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time. Note that, real-time is a time frame imposed by external constraints, such as human perception on time. Further, synchronization is to transmit data packet, such as audio or video data transmitted over a network so that they can played back together without delay. The process can be backing up the data on a handheld computer to the linked on a desktop computer or server. Asynchronous can be interpreted other way. On the other hand, Ludwig teaches asynchronous data operations. Ludwig teaches real-time communication between a plurality of users each with respective communication devices, audio and/or video teleconferencing, which may be recorded and 'stored for later playback', including both audio/video and 'all data interactions'.. permits the 'asynchronous' exchange of arbitrary multimedia documents (see ¶ [0042, [0043], [0068], 'portions' of the audio/video and data of the teleconference can be recorded complete with all the data interactions), which meets claim limitations. Further, Ludwig teaches (¶ [0150], this message could advise the caller when the call will be resumed, or could state that the call is being terminated and will be reinitiated at a later time; note that, Ludwig not only changing the caller's callhandle from the active state to a 'hold' state and then resumed the call, the reference transferring data on a predetermined period of time during this operation; see (¶ [0251], GUIs and other functions required to provide the previously described MMDM (multimedia document), functionality.. a user can rapidly access desired selected 'portions' (i.e. subset) of a stored multimedia document..searches includes context-based and content-based searches, 'time-based searches', and event-based searches (window events, call management events, speech/audio events, etc., [0243], delivering delayed collaboration, as well as the additional ability to review the information multiple times and, as described hereinafter, to edit, re-send, and archive it. [0294], activities in this scenario took place during a relatively short portion of the expert's day (e.g., less than an hour of cumulative time), [0156], [0186]).

Any other arguments presented by applicant's are the similar arguments and they are moot for the same reasons as discussed hereinabove.

Applicant is respectfully advised to review all the prior art of record very closely and carefully to better recite the claim language.

Examiner examines the claims based on 'broad and reasonable interpretation of claim' as recommended by MPEP§ 2105. While it is appropriate to use the specification to determine what applicant intend a term to mean, a positive limitation from the specification cannot be read into a claim that does not itself impose that limitation. A broad interpretation of a claim by USPTO personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly that is justified or intended. An applicant can always amend a claim during prosecution to better reflect the intended scope of the claim.